

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

WALTER W. THIEMANN, et al.,	:	CIVIL ACTION NO. C-1-00-793
	:	
Plaintiffs	:	(Judge Sandra S. Beckwith)
	:	(Magistrate Judge Timothy S. Hogan)
-v-	:	
	:	MEMORANDUM OF DEFENDANTS,
	:	DINSMORE & SHOHL, LLP, CLIFFORD
	:	ROE AND CHARLES HERTLEIN
DINSMORE & SHOHL, LLP., et al,	:	IN OPPOSITION TO PLAINTIFFS’
	:	“EMERGENCY” MOTION TO STRIKE
Defendants.	:	DEFENDANTS’ MOTIONS TO DISMISS

In response to Plaintiff’s “Emergency” Motion to Strike Defendants’ Motion to Dismiss, the Defendants, Dinsmore & Shohl, LLP, Clifford Roe and Charles Hertlein (collectively herein “the Dinsmore Defendants”) incorporate by reference herein, the memorandum of the OHSL and Provident Defendants filed in opposition to Plaintiffs’ Motion.

In addition, the Dinsmore the Defendants will address the comments made by counsel for Plaintiffs’ in his recent communication to this Court (copy attached). In the hearing before Judge Hogan regarding the two issues raised in Plaintiffs’ Motion, a discussion ensued regarding elementary civil procedure principles. The first point raised by Defendants’ counsel was that if the Motions to Dismiss contained matters not appropriate for consideration under Rule 12(b)(6), this Court would have two choices: (1) disregard the inappropriate materials; or (2) convert the motion to one for summary judgment and provide notice to the parties.

Regarding the second issue, counsel’s letter fails to accurately reflect the comments of counsel for these Defendants. Regarding whether Defendants’ Motion reargues issues

that were decided by the Court in its July 25, 2001 Order, (an Emergency Motion (Doc. 261), at 5), counsel for these Defendants indicated that the consolidated and amended class action Complaint recently filed by Plaintiffs included additional factual allegations not present in the original Complaint and incorporated various documents, including deposition testimony. Accordingly, it is these Defendants' position that because of the additional factual allegations and incorporated materials, it is appropriate to address these issues as raised in the consolidated and amended class action Complaint. What Defendants' counsel indicated at the conference with Magistrate Hogan was that "if" this Court concluded to the contrary, then it would so indicate in its order.

While counsel for these Defendants is more than willing to participate in a conference with the Court regarding counsel for Plaintiffs' scheduling problems, Plaintiffs' Emergency Motion to Strike should be overruled.

Respectfully submitted:

S/ Michael E. Maundrell

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Daniel J. Donnellon, Rachel A. Rowe, Jamie Ramsey and James E. Burke, Attorneys for Defendants, OHSL Financial Corp., Provident Financial Group, Inc. and Keating, Muething & Klekamp, 1400 Provident Tower, One East Fourth Street, Cincinnati, OH 45202; Michael R. Barrett, Attorney for KEATING, MUETHING & KLEKAMP, P.L.L. and Mark Weiss, 105 East Fourth Street, Suite 500, Cincinnati, Ohio 45202-4015; John B. Pinney and J. Michael Debbeler, Attorneys for Defendants Oak Hills and Provident, 1900 Fifth Third Center, 511 Walnut Street, Cincinnati, Ohio 45202; James E. Gauch, and **I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:** Gene Mesh and Michael G. Brautigam, Attorneys for Plaintiffs, 2605 Burnet Avenue, Cincinnati, Ohio 45219-2502; Melissa D. Star and Stephen J. Brogan, Attorneys for Ernst & Young, 51 Louisiana Avenue, N.W., Washington, D.C., 20001-2113.

S/ Michael E. Maundrell
Michael E. Maundrell

JW H:dlt
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